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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,308	10/18/2004	Flom H Douglas	5570WOUS	6115
30173	7590	05/23/2006	EXAMINER	
GENERAL MILLS, INC.			DURAND, PAUL R	
P.O. BOX 1113			ART UNIT	
MINNEAPOLIS, MN 55440			PAPER NUMBER	

3721

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/501,308	<b>Applicant(s)</b> DOUGLAS, FLOM H	
	<b>Examiner</b> Paul Durand	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 31-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-33 is/are rejected.
- 7) ☒ Claim(s) 34-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>04/06</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on 3/13/2006. These drawings are accepted.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tisma (US 5,170,610) in view of Hardage et al (US 4,736,570).

In claim 31, Tisma discloses the invention as claimed including a transfer system acting in cooperation with a bagger (not shown, but upstream of conveyor 46) and a cartoner system (not shown, but downstream of direction "A"). The conveyor self adjusting to support asynchronous or independent operation of the bagger and cartoner (see abstract, Fig.1 and C3,L24-62). What Tisma does not disclose is the transfer system being comprised of at least one of a servo conveyor, air conveyor and a fan feeder. However, Hardage teaches that it is old and well known in the art of conveying and packaging to provide a transfer system comprised of conveyor 115, which receives material from a feeding device 10, prior top being fully packaged down the manufacturing line, where the conveyor is powered by a servo motor 126 for the purpose of allowing a conveyor to operate independently of other components in the

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manufacturing line (see Fig. 5 and C8,L12-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the transfer system of Tisma, with the servo powered conveyor as taught by Hardage for the purpose of allowing a conveyor to operate independently of other components in the manufacturing line.

In claim 33, Tisma discloses the invention as claimed including a transfer system, bagger system and cartoner, where the operation of the bagger is uncoupled (unattached) to the cartoner (see abstract, Fig.1 and C3,L24-62). What Tisma does not disclose is the transfer system being comprised of at least one of a servo conveyor, air conveyor and a fan feeder. However, Hardage teaches that it is old and well known in the art of conveying and packaging to provide a transfer system comprised of conveyor 115, which receives material from a feeding device 10, prior top being fully packaged down the manufacturing line, where the conveyor is powered by a servo motor 126 for the purpose of allowing a conveyor to operate independently of other components in the manufacturing line (see Fig. 5 and C8,L12-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the transfer system of Tisma, with the servo powered conveyor as taught by Hardage for the purpose of allowing a conveyor to operate independently of other components in the manufacturing line.

4. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tisma in view of Reuter et al (US 4,262,470) in further view of Hardage.

Tisma discloses the invention substantially as claimed including a transfer

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system acting in cooperation with a bagger (not shown, but upstream of conveyor 46) and a cartoner system (not shown, but downstream of direction "A"). The conveyor self adjusting to support asynchronous or independent operation of the bagger and cartoner (see abstract, Fig.1 and C3,L24-62). What Tisma does not disclose is the specific use of a vertical bagger to package the product and a transfer system being comprised of at least one of a servo conveyor, air conveyor and a fan feeder. However, Reuter teaches that it is old and well known in the art of packaging to provide a machine with a vertical (VFFS, generally indicated at 20) bagger which bags product and then places the product on an outgoing conveyor 75, for the purpose of packaging and shipping a product to a further manufacturing operation (see Figs. 1,2,4 and C2,L48 – C3,L39).

Furthermore, Hardage teaches that it is old and well known in the art of conveying and packaging to provide a transfer system comprised of conveyor 115, which receives material from a feeding device 10, prior top being fully packaged down the manufacturing line, where the conveyor is powered by a servo motor 126 for the purpose of allowing a conveyor to operate independently of other components in the manufacturing line (see Fig. 5 and C8,L12-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Tisma with the vertical bagging means as taught by Reuter and the servo powered conveyor as taught by Hardage for the purpose of packaging and shipping a product to a further manufacturing operation and allowing a conveyor to operate independently of other components in the manufacturing line.

***Allowable Subject Matter***

5. Claims 34-48 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. The newly cited reference of Hardage has been included to address the limitation of the conveyor. These limitations were added in the amendment filed 3/13/2006.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Reuter was chosen to show applicant that it is well known to place a vertical bagging machine in line with an out feed conveyor, where the package is moved to a subsequent operation.

Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would

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have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Therefore, for the reasons indicated above, the rejection is deemed proper.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
May 17, 2006

  
Stephen F. Gerrity  
Primary Examiner